

1 Roger C. Hsu - SBN 170589
2 Joseph M. Liu - SBN 220938
3 LAW OFFICES OF ROGER C. HSU
4 175 South Lake Avenue, Suite 210
5 Pasadena, CA 91101
6 Telephone: (626) 792-7936
7 Facsimile: (626) 685-2859
8 rchl@att.net
9 joseph@liu.com

Attorneys for Plaintiff/Counter Defendant Interworks Unlimited, Inc.

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 Interworks Unlimited, Inc., a California) **Case No. 2:17-cv-4983 AB TJH KSx)**
14 corporation,)

15 Plaintiff,
16 v.

17 Digital Gadgets, LLC., a New Jersey)
18 limited liability company,)

19 Defendant.

) **DECLARATION OF ERIC LU IN**
) **SUPPORT OF PLAINTIFF'S**
) **REPLY TO DEFENDANT'S**
) **OPPOSITION TO MOTION FOR**
) **SUMMARY JUDGMENT**

) Date: January 7, 2019
) Time: UNDER SUBMISSION
) Courtroom: 9B

21 _____)
22 Digital Gadgets, LLC., a New Jersey)
23 limited liability company,)

24 Counterclaimant,

25 v.

26 Interworks Unlimited, Inc., a California)
27 corporation,)

28 Counter-defendant)

- 1 1. I am an authorized representative of Plaintiff Interworks Unlimited, Inc.
2 (“Plaintiff”) and am authorized to make this declaration on its behalf. I have
3 personal knowledge of each of the facts set forth in this Declaration, and can
4 testify competently thereto, except as to the matters stated on information and
5 belief, and as to such matters I believe them to be true.
- 6 2. I am also a custodian of records of the Plaintiff and am authorized to
7 authenticate the exhibit(s) stated below. This exhibit(s) contains information
8 compiled, prepared or received by qualified personnel of the Plaintiff in the
9 course of regularly conducted business activities, were made at or near the time
10 of the occurrence of the matters set forth by a person with knowledge of those
11 matters, pursuant to a business duty to keep accurate and complete records, are
12 made and kept in the course of the regularly-conducted business activities, and
13 were made and kept by the regularly conducted business activities as a regular
14 practice.
- 15 3. In or about December 2016, the Plaintiff requested that its factor at that time,
16 Bibby Financial Services (CA), Inc. (“Bibby”) extend credit coverage for a
17 number of invoices it issued to Defendant Digital Gadgets, LLC. (“Defendant”).
- 18 4. In order for Bibby to extend credit coverage for those invoices, they would be
19 assigned and sold to Bibby.
- 20 5. Bibby would then advance payment on those invoices and then seek payments
21 directly from the Defendant.
- 22 6. As part of the process to determine whether to extend credit coverage, the
23 Plaintiff would submit to Bibby the invoices it wished to obtain credit coverage
24 on with a stamp saying that the invoices were assigned and sold to Bibby.
- 25 7. That was the reason why the invoices issued to the Defendant that were
26 attached as Exhibit 7 to Plaintiff’s motion papers, were stamped with the
27 statement that the invoices were assigned and sold to Bibby.
- 28

1 8. Those invoices were submitted to Bibby while it was still determining whether
2 to extend the requested credit coverage.

3 9. Prior to extending coverage, Bibby needed to run a credit check on Defendant.

4 10. On or about February 14, 2017, after months of refusing to provide Bibby with
5 the requested financial information, the Defendant finally provided Bibby with
6 some limited bank information.

7 11. Based on its review of that limited information, the requested credit coverage
8 was declined due to insufficient funds on the part of the Defendant. A true and
9 correct copy of the email from Bibby reflecting the foregoing decline is
10 attached and incorporated hereto as Exhibit A. "Euler" reflected in the email
11 stood for Euler Hermes, the insurance company that would have insured the
12 invoices if approved (see highlighted).

13 12. At no time were any invoices issued to the Defendant ever assigned or sold to
14 Bibby.

15 13. This includes those invoices that were attached as Exhibit 7 to Plaintiff's
16 motion papers.

17 14. In or about July of 2018, the Plaintiff entered into a Buy-Out Agreement with
18 Bibby in which the parties ceased doing business with each other.

19 15. The Plaintiff currently has no business relationship with Bibby, and Bibby
20 currently has no claims against the Plaintiff or any of the Plaintiff's customers.

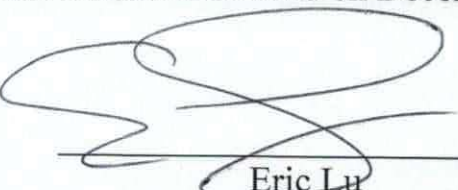
21 16. In or about July of 2018, Cash Capital and Plaintiff entered into a settlement
22 agreement that settled and terminated all claims and suits against each other.

23 17. This settlement agreement superseded all previous agreements between the
24 Cash Capital and the Plaintiff including, without limitation, the "Agreement of
25 the Purchase and Sale of Future Receipt" that was entered into in or about
26 January of 2017.

27 18. Cash Capital currently has no claims against the Plaintiff or any of the
28 Plaintiff's customers.

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct. Executed on December 23, 2018.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Eric Lu
Declarant

EXHIBIT A

From: Ingrid Chen <ichen@bibbyusa.com>
Sent: Tuesday, February 14, 2017 1:51 PM
To: Eric@interworks-usa.com
Cc: CHARLIE@digitalgadgets.com
Subject: Digital Gadgets

Hi Eric,

Just talked to Erika at Euler.

Based on the information she received, she won't be able to extend coverage on Digital Gadgets.

The bank information only shows \$26K checking account. Euler is looking for a more solid information for \$1M plus credit coverage.

Charlie,

Can you share your financial to Euler? You do not need to share it with us, but Euler do need to get more stronger information as the bank information what they are looking for. They need to know your profitability, liquidity, cash flow, Balance sheet and P & L in order to make credit decision.

If you can provide the financial info please email it directly to Erika at Euler. They will keep it confidential and will not share it to any other party.

Thank you

Ingrid Chen | AVP, Account Executive
Bibby Financial Services (California), Inc.



Tel: +1 805-413-8119 | Fax: +1 805-267-4151

Email: ichen@bibbyusa.com | Web: <http://www.bibbyusa.com>

Address: 3027 Townsgate Road, Suite 140, Westlake Village, California 91361, United States

Follow us on 

Join Us: 

Follow Us: 

This e-mail and any attachments are strictly confidential and intended solely for the addressee. It may contain information, which is covered by legal, professional or other privilege. If you are not the intended recipient of this document then you must immediately inform the sender at the address below and delete this e-mail and any attachments completely from your computer system. You must not make copies or disclose the contents of this document to anyone, nor take any action based upon it. E-mail is an informal method of communication and is subject to possible data corruption. Bibby Financial Services is unable to exercise control over the content of the information contained in transmissions made via the Internet. Opinions, conclusions and other information expressed in this message are solely those of the author and are not given or endorsed by Bibby International Trade Finance, Inc unless otherwise indicated by an authorized representative independent of this message. It is the responsibility of the recipient to ensure that this message and any attachments are virus free and no responsibility is accepted by Bibby International Trade Finance, Inc for any loss or damage arising in any way for its use. Bibby Financial Services a Florida corporation whose principal office is located at 600 TownPark Lane, Suite 450, Kennesaw, GA 30144.

Fax



Date: February 14, 2017
 To: Todd Valoff Fax: 212-621-1253
 Company: First Republic
 From: EACI Fax: 410-902-8463
 Regarding: Bank Reference Request

* Request for a commercial credit rating.

* Purpose is general trade.

The following is information that we require on Digital Gadgets, LLC

With respect to account #:

1. Date the account was opened
2. Checking account balance
3. Returned checks
4. Does the company have any cash investments (i.e., term deposits)?

12/9/15
 \$ 26,672.74
 N/A
 ND

With respect to the line of credit:

1. Date the line of credit was set-up
2. Size of the line of credit
3. Percentage utilization -- both currently and on average
4. Can the company borrow the full amount of the line? (Example: Is it margined?)
5. Does the amount show good fluctuation?
6. Is the line of credit secured, and if so, what is the security?

N/A
 \$
 ✓

With respect to term loans:

1. Date the loan was made
2. Size of the term loans

N/A
 \$
 ✓

N/A

3. Repayment schedule of term loans
4. Current balance of the term loans
5. Payment behavior during the term loans
6. Are covenants currently being met under all loan agreements?
7. Does the bank have any assets as security other than the assets of the borrowing firm?

With respect to the banking relationship in general:

1. General comments on the account
2. Is the account a satisfactory one?
3. Would the bank recommend the company for the amount in question? \$
4. Letter of Credit: Yes No
5. Term Deposits: Yes No


Good
YES
N/A
\$
\$

Thank you for your assistance in this matter.

Sincerely,

Joel Valoff
2/14/17

Euler Hermes ACI
800 Red Brook Boulevard
Owings Mills, Maryland 21117
www.eulerhermes.com

A company of Allianz 

CONFIDENTIALITY NOTICE

This fax may contain confidential information protected by law. If it is not addressed to you, do not copy it or disclose its contents to anyone else, unless authorized to do so. If you receive this fax in error, please call us, reverse charges and return it as soon as possible to us (we will reimburse postage).

From: Ingrid Chen <lchen@bibbyusa.com>
Sent: Tuesday, February 14, 2017 8:54 AM
To: Charlie Tebele <CHARLIE@digitalgadgets.com>
Cc: Eric <Eric@interworks-usa.com>
Subject: RE: Digital Gadgets Bank Reference

Charlie,

Can you provide the email address for Josh at Rosenthal?

I will re-send the request to him


Thanks

Ingrid Chen | AVP, Account Executive
Bibby Financial Services (California), Inc.



Tel: +1 805-413-8119 | Fax: +1 805-267-4151
Email: lchen@bibbyusa.com | Web: <http://www.bibbyusa.com>
Address: 3027 Townsgate Road, Suite 140, Westlake Village, California 91361, United States

Follow us on  Join Us:  Follow Us: 

 Please consider the environment... do not print this email unless you need to.

This e-mail and any attachments are strictly confidential and intended solely for the addressee. It may contain information, which is covered by legal, professional or other privilege. If you are not the intended recipient of this document then you must immediately inform the sender at the address below and delete this e-mail and any attachments completely from your computer system. You must not make copies or disclose the contents of this document to anyone, nor take any action based upon it. E-mail is an informal method of communication and is subject to possible data corruption. Bibby Financial Services is unable to exercise control over the content of the information contained in transmissions made via the Internet. Opinions, conclusions and other information expressed in this message are solely those of the author and are not given or endorsed by Bibby International Trade Finance, Inc unless otherwise indicated by an authorized representative independent of this message. It is the responsibility of the recipient to ensure that this message and any attachments are virus free and no responsibility is accepted by Bibby International Trade Finance, Inc for any loss or damage arising in any way for its use. Bibby Financial Services a Florida corporation whose principal office is located at 600 TownPark Lane, Suite 450, Kennesaw, GA 30144.

From: Charlie Tebele [<mailto:CHARLIE@digitalgadgets.com>]
Sent: Tuesday, February 14, 2017 8:32 AM
To: Ingrid Chen
Cc: Eric
Subject: FW: Digital Gadgets Bank Reference

Ingrid

This is just our bank that we transact with

I see there are questions like Line of credit...

That is what you would get from Rosenthal

Let me know if you need anything else

Charlie

From: Valoff, Todd [<mailto:Tvaloff@firstrepublic.com>]
Sent: Tuesday, February 14, 2017 11:30 AM
To: Ingrid Chen <ichen@bibbyusa.com>
Cc: Charlie Tebele <CHARLIE@digitalgadgets.com>; Eric@interworks-usa.com
Subject: RE: Digital Gadgets Bank Reference

From: Ingrid Chen [<mailto:ichen@bibbyusa.com>]
Sent: Tuesday, February 14, 2017 11:18 AM
To: Valoff, Todd
Cc: CHARLIE@digitalgadgets.com; Eric@interworks-usa.com
Subject: Digital Gadgets Bank Reference

Hi Todd,

Attached is the bank reference request on Digital Gadgets. Please fill it out and return to 410-902-8463 and email it to me as well.

Thank you EXHIBIT A

Ingrid Chen | AVP, Account Executive
Bibby Financial Services (California), Inc.



Tel: +1 805-413-3119 | Fax: +1 805-267-4151

Email: ichen@bibbyusa.com | Web: <http://www.bibbyusa.com>

Address: 3027 Townsgate Road, Suite 140, Westlake Village, California 91361, United States



♻️ Please consider the environment... do not print this email unless you need to.

This e-mail and any attachments are strictly confidential and intended solely for the addressee. It may contain information, which is covered by legal, professional or other privilege. If you are not the intended recipient of this document then you must immediately inform the sender at the address below and delete this e-mail and any attachments completely from your computer system. You must not make copies or disclose the contents of this document to anyone, nor take any action based upon it. E-mail is an informal method of communication and is subject to possible data corruption. Bibby Financial Services is unable to exercise control over the content of the information contained in transmissions made via the Internet. Opinions, conclusions and other information expressed in this message are solely those of the author and are not given or endorsed by Bibby International Trade Finance, Inc unless otherwise indicated by an authorized representative independent of this message. It is the responsibility of the recipient to ensure that this message and any attachments are virus free and no responsibility is accepted by Bibby International Trade Finance, Inc for any loss or damage arising in any way for its use. Bibby Financial Services a Florida corporation whose principal office is located at 600 TownPark Lane, Suite 450, Kennesaw, GA 30144.



The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer. This message cannot be guaranteed to be secure or error-free.

First Republic Bank and its related entities do not take responsibility for, or accept time-sensitive instructions sent by email including orders, funds transfer instructions or stop payments on checks. All instructions of this nature must be handled by direct communication, not email.

We reserve the right to monitor and review the content of all email communications sent or received. Emails sent to or from this address may be stored in accordance with regulatory requirements.

This email has been scanned for all known viruses, spam and inappropriate graphical content by the MessageLabs SkyScan service and any potentially infected messages have been quarantined.
For more information about the virus scanning service, or assistance with
quarantined messages please contact the CST Business Systems Team on +44 (0)1295 661900
